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International Air Transport Association: Agreement Relating to Liability Limitations of the Warsaw Convention)
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Docket 49152

REQUEST FOR EXTENSION OF
DISCUSSION AUTHORITY WITH ANTITRUST IMMUNITY,
MODIFICATION OF CONDITIONS AND A SHORTENED ANSWER PERIOD

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U.S. DEPARTMENT OF TRANSPORTATION
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International Air Transport)
Association: Agreement Relating) Docket 49152
to Liability Limitations of the)
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REQUEST FOR EXTENSION OF
DISCUSSION AUTHORITY WITH ANTITRUST IMMUNITY
MODIFICATION OF CONDITIONS AND A SHORTENED ANSWER PERIOD

The International Air Transport (IATA) hereby requests that Order 95-2-44 be modified: (1) to extend the deadline in ordering paragraph 1 until December 31, 1995; and (2) to delete condition 3(g) and part of condition 3(a). IATA further requests that the answer period under 14 C.F.R. § 303.42 be shortened from 21 to five days.

1. By Order 95-2-44, published March 8, 1995¹, the Department of Transportation (DOT) granted IATA's September 24, 1993 request for discussion authority concerning the limits and conditions of passenger liability and exempted the discussion participants from the operation of the antitrust laws under 49 U.S.C. § 41309. Discussion authority was granted for a period of 120 days from the date of publication of the order and expires on July 6, 1995.

2. IATA convened plenary and working group sessions of an Airline Liability Conference ("ALC") in Washington, D.C., on June 19-June 23, 1995. The plenary session adopted the report

¹ 60 Fed. Reg. 12,813 (1995).

attached as Annex 1 which sets forth its conclusions and its proposed timetables for further work and intercarrier agreement.

3. On or before July 6, 1995, IATA will file the formal report of the June 19 meeting as required by paragraph 3(c) of Order 95-2-44. Further, IATA will distribute copies of Annex 1 to all U.S. and foreign air carriers invited to the ALC so that they will be able to provide input to the working groups and IATA Secretariat.

4. IATA expects to complete its working group reports and drafting efforts in accordance with the timetable in Annex 1 and to approve relevant agreements among IATA members and other interested carriers on October 30-31, 1995. Thereafter, as contemplated in Annex 1, IATA will prepare and coordinate the filing of requests for approval and other appropriate authorizations from governments and will seek the broadest possible adherence to enhanced passenger liability rules from the international carrier community. IATA believes that an extension of the current deadline in paragraph 1 of Order 95-2-44 until December 31, 1995 is necessary to permit this work to go forward and that the achievement of the goals set forth in Annex 1 is clearly consistent with the public interest.

5. IATA further notes that the working groups to be established under Annex 1 will include airlines from all regions of the world. IATA believes that it would be

unnecessarily burdensome to require these working groups, whose advisory tasks are bounded by Annex 1, to meet exclusively in Washington and that they should be permitted to meet elsewhere, including Montreal and Geneva. IATA is prepared to continue giving advance notice of such meetings to the U.S. DOT and Department of Justice as well as to any air carrier or foreign air carrier requesting such notice. IATA is also prepared to include at least one U.S. air carrier in each working group and to continue to report formally under paragraph 3(c). However, IATA believes that it should be relieved from the burden of continuing notice to all air carriers and foreign air carriers because the notice already given, the further distribution of Annex 1, and the widespread publicity given the ALC in the airline community plainly suffice to give any interested airline opportunity to be heard in the ongoing agreement process. Thus, IATA requests appropriate modification of paragraph 3(a) and deletion of paragraph 3(g) of Order 95-2-44.


6. Because Annex 1 sets a tight timetable, IATA believes that a hiatus in the authority granted by Order 95-2-44 would be unfortunate and contrary to the public interest. Accordingly, IATA requests that the period for comment under 14 C.F.R. § 303.42 be shortened to five days.

WHEREFORE, IATA requests that the relief sought above be granted.

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Airline Liability Conference

REPORT OF THE CONFERENCE SESSION *19-23 JUNE 1995, WASHINGTON, D.C.*

The Conference session was attended by 65 airlines, 6 regional airline associations, 3 other industry associations and observers from ICAO, ECAC, EU and the Government of the U.S. (Attendance List attached as Annex 1).

The Conference elected the following Conference officers:

<i>Chairman:</i>	Lorne S. Clark (IATA General Counsel & Corporate Secretary)
<i>Vice-Chairman:</i>	Vijay Poonosamy (Director Legal & International Affairs, Air Mauritius)
<i>Rapporteur:</i>	Ana de Montenegro (Corporate Director Insurance & Contracts, TACA International)
<i>Chairing the Drafting Committee:</i>	Leslie Mooyaart (Senior Vice-President & General Counsel, KLM)

The Conference Agenda and Rules of Procedure, as adopted, are attached as Annexes 2 and 3, respectively.

To supplement discussion in Plenary, the Conference established two Working Groups, one on the Supplemental Compensation Plan, under the chairmanship of Mr Gerald Mayo (Counsel to Delta Air Lines), the other on the Japanese Initiative, under the chairmanship of Mr Koichi Abe (Vice-President, Legal Affairs Department, Japan Air Lines).

I. Following extensive debate in Plenary and taking into consideration proposals by a number of delegates and the results of the discussion in the Working Groups, the Conference concluded that:

1. The Warsaw Convention System must be preserved. However, the existing passenger liability limits for international carriage by air are

grossly inadequate in many jurisdictions and should be revised as a matter of urgency.

2. Governments, through ICAO, and in consultation with airlines, should act urgently to update the Warsaw Convention System and to address liability issues.
3. Governments should act expeditiously to bring into force Montreal Protocol No. 4 (Cargo) independently of their consideration of Montreal Additional Protocol No. 3.
4. The conditions and expectations for the Conference set out in U.S. DOT Order 95-2-44 of 22 February 1995 (Annex 4) restricted the ability of participating airlines to reach agreement at this session on the enhancement of compensation for passengers under the Warsaw Convention System.
5. In particular, the Conference objected to the U.S. expectation that the results of the Conference would ensure full compensatory damages for claims by all U.S. citizens and permanent residents traveling between countries outside the U.S., as it would discriminate among passenger nationalities and would impose on airlines an unreasonable responsibility that should be borne by the U.S. Government.

II. In light of the foregoing and subject to the conclusions of the working groups mentioned below, and in order to receive government approvals as required, the Conference agreed to recommend that a new enhanced liability package should be adopted by airlines, as quickly as possible, to include:

- (a) an updated liability limit of 250,000 SDRs, taking into account the effects of inflation on the limits in the 1966 Montreal Agreement, the 1971 Guatemala City Protocol and the 1975 Montreal Additional Protocol No. 3, as well as limits proposed by governments;

- (b) periodic updating of liability limits to reflect the effects of inflation;
- (c) standards and procedures for up-front payments to meet claimants' immediate needs, in accordance with established local customs, practices and applicable local law;
- (d) the retention of the defenses under Article 21 of the instruments of the Warsaw Convention System;
- (e) where circumstances so require, a waiver up to 250,000 SDRs of the defenses under Article 20, paragraph (1) of the instruments of the Warsaw Convention System;
- (f) where circumstances so require, recovery of proven compensatory damages beyond 250,000 SDRs through appropriate and effective means; and
- (g) complete compensation as allowed by and in accordance with applicable law.

III. Taking into account, and in an effort to meet, the needs and desires of various government authorities, the Conference agreed that:

1. The Conference Chairman should appoint one working group to urgently assess and report on the cost impact on airlines of the recommended enhanced liability package and, as a matter of urgency, make specific proposals as to how small and medium-size airlines can be assisted to meet additional costs resulting from possible increased liability.
2. The Conference Chairman should appoint a second working group to further consider and report on appropriate and effective means to secure complete compensation for passengers, including the Japanese Initiative and the U.S. Supplemental Compensation Plan, in light of discussions at the Conference, and taking particular account of the

circumstances of small and medium-size airlines and any submissions made to that working group by 31 July 1995.

3. The IATA Secretariat should prepare as a matter of urgency and circulate to airlines by 31 August 1995 an information paper on expeditious settlement of airline passenger liability claims.
4. The IATA Secretariat, in consultation with the Legal Advisory Group, should prepare draft texts of an intercarrier agreement, a plan for an appropriate and effective means to secure complete compensation, and circulate them and related documents by 31 August 1995, including the reports mentioned in paragraphs III.1. and 2.
5. The IATA Secretariat should immediately seek an extension of antitrust immunity from the U.S. authorities to permit and facilitate all further discussions by airlines necessary to complete the work of the Conference.
6. The IATA Secretariat, upon approval by and acting in accordance with any decision of the 1995 IATA Annual General Meeting, scheduled for 30-31 October 1995, should submit the texts of the intercarrier agreement, the plan for an appropriate and effective means to secure complete compensation and related documents for requisite governmental approval.

The Conference expressed its appreciation to IATA for the efficient organization of the Conference and congratulated the Conference officers and the Working Group Chairmen for their valuable contributions to its deliberations and its results to date.

The Conference Plenary session adopted this Report and adjourned on 23 June 1995, subject to the call of the Chairman.

CERTIFICATION OF SERVICE

I certify that on the 26th day of June, 1995, I caused to be served by hand delivery, copies of the Request for Extension of Discussion Authority with Antitrust Immunity, Modification of Conditions and a Shortened Answer Period on the following:

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